

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: COREY AGR. INC. OF LYTTON IOWA NPDES PERMIT NO.2-13-00-0-4(2) CALHOUN COUNTY, IOWA ID# 56238	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO- 05
---	--

TO: Corey Agr. Inc. of Lytton
c/o Jerry J. Corey, Reg. Agent & President
1530 280th Street
Lytton, IA. 50561

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Corey Agr. Inc. of Lytton and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa NPDES Permit No. 2-13-00-0-4(2). In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Don Cunningham
IDNR Field Office #3
1900 North Grand Ave., Suite E17
Spencer, IA 51301
Ph: (712) 262-4177
Fax: (712) 262-2901

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

52060 FEB13'09 PM 2:14

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

ISSUED TO: COREY AGR. INC. OF LYTTON

II. JURISDICTION

This Order is issued pursuant to 2007 Iowa Code Supplement section 455B.175(1) which authorizes the Director to issue an order addressing any violation of Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Corey Agr. Inc. of Lytton (Corey) owns and operates a cattle open feedlot operation located in the NW1/4 of Section 4, T87N, R34W (Elm Grove Township), Calhoun County, Iowa. The operation consists of a 1,500 head capacity open feedlot and two separate manure control systems, identified as the East and West Systems.

2. Iowa NPDES Permit No. 2-13-00-0-4(2) (hereinafter, "Permit") was issued on December 12, 2005, with an expiration date of June 30, 2008. The Permit authorized the use of an alternative technology (AT) system consisting of a solids settling basin and a vegetative treatment area (VTA) for the East System and a solids settling basin and a two channel vegetative treatment area (VTA) for the West System. The Permit requires monitoring and reporting for both systems. The Permit refers to the west system as the "pilot portion" of the operation and Iowa State University monitors that portion of the operation as set forth in the Permit. However, the Permit expressly provides in Section I(D), "The Permittee is responsible for the compliance with all requirements set forth in this conditional AT NPDES Permit for the entire operation." Also, the Permit, in Section I(D), includes an explanation of the importance of monitoring and reporting in determining whether the AT system will be authorized at the end of the two year term of the Permit: "The review and evaluation of the second year actual monitoring results will determine whether the system meets the equivalent performance standard of IDNR's rules {567 IAC 65.100 (definition of "alternative technology settled open feedlot effluent control system") and 65.104(10)"b". At the end of the second year from the effective date of this conditional permit, which coincides, with the expiration date of this conditional permit, the IDNR will inform the Permittee as to whether the Permittee can continue operating under AT program or whether the Permittee must construct and operate conventional manure control systems."

3. By letter dated June 27, 2006, Corey's engineer notified the Department that the AT system for the Corey operation was complete.

4. Department Field Office #3 (FO3) reminded Corey by letter dated February 7, 2007, that all monitoring and reporting requirements in the Permit must be satisfied.

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

ISSUED TO: COREY AGR. INC. OF LYTTON

5. By letter to Corey dated June 2, 2008, the Department summarized the sampling, monitoring and reporting efforts by Corey over the two year term of the Permit. Subsequently, the Department conducted an additional review of these requirements. Areas that substantially met the requirements of the Permit included: daily record keeping of precipitation, temperature and water line inspections; weekly record keeping of solid settling basin depth; record keeping of lot scraping, pen stocking and land application of manure; vegetation harvest dates; surface water and ground water baseline sampling for both pilot and non-pilot portions; quarterly monitoring reports for pilot portion; and annual pollutant load discharge reports for pilot portion. Areas that did not meet the requirements of the Permit for the non-pilot portion included: weekly record keeping of VTA vegetation condition; submittal of vegetation photos; results of baseline (prior to use of non-pilot VTA) shallow and deep soil sampling, results of annual shallow soil sampling for 2007; quarterly monitoring reports of system discharge and sampling data for 2007; and annual pollutant load discharge report for 2007.

6. On January 2, 2008, the Department received Corey's application for renewal of the Permit

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.303, authorizes an open feedlot operation to use an AT system for open feedlot effluent control, requires that the AT system provide an equivalent level of open feedlot effluent control as would be achieved by using a settled open feedlot effluent basin and requires the Department to adopt rules establishing requirements for the construction and operation of AT systems. The Department has adopted rules regarding AT systems at 567 IAC chapter 65, Division II, specified in part below.

2. 567 IAC 65.104(9)"d" and "h" set forth minimum monitoring and reporting requirements that must be included in NPDES permits issued to open feedlot operations with AT systems. Those requirements are set forth as conditions in Sections III, V, VI, VII and VIII of the Permit. The foregoing facts document that some of the monitoring and reporting requirements specified in the Permit were not satisfied.

3. 567 IAC 65.104(10)"b"(1 & 2) provides that renewal of an NPDES permit involving use of an AT system is "contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system...If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system." The foregoing facts reveal that monitoring and reporting of the non pilot portion (East system) to date is insufficient to enable the Department to determine whether the AT system is providing an equivalent level of performance. Therefore, contemporaneous with the issuance of this Order, the

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

ISSUED TO: COREY AGR. INC. OF LYTTON

Department intends to renew the Permit with modifications for a 3 year period to allow an additional period of operation with all required monitoring and reporting so the Department may determine whether the AT system is providing an equivalent level of performance to that provided by a containment system.

567 IAC 65.104(11) provides that the Department may modify, suspend, refuse to renew or revoke in whole or part any NPDES permit for cause. Cause for modification, suspension or revocation of a permit includes, among other things, violation of any term or condition of the permit. By entering into this Order, Corey acknowledges its understanding that the Department may require installation of a conventional runoff containment system or refuse to renew the Permit when considering the next NPDES Permit renewal application if the monitoring and reporting, or the lack thereof, fails to demonstrate that the AT system is meeting the equivalent performance standard.

V. ORDER

THEREFORE, the Department hereby orders and Corey consents to do the following:

1. Comply with all conditions, including all monitoring and reporting requirements, of the Permit as modified and renewed by the Department.
2. Corey agrees and is hereby ordered to pay a stipulated penalty in the amount of \$500 per violation per day, or part thereof, for failure to comply with paragraph 1, above.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with stipulated penalties. The stipulated penalty is determined as follows:

- a. Economic Benefit. Corey has enjoyed long term financial savings by failing to comply with all monitoring and reporting requirements in the Permit. However, the Department is assessing an amount for this factor only in the event of noncompliance with the requirements set forth in V.

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

ISSUED TO: COREY AGR. INC. OF LYTTON

ORDER, paragraph 1, above. The stipulated penalties agreed upon and ordered in this matter include consideration of economic benefit.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, significant civil penalties are authorized by statute. Despite the penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. The integrity of the NPDES permit program is threatened in that Corey's actions encourage others to disregard conditions of NPDES permits. Further, the environment is threatened in that the lack of complete monitoring records prevents the Department from determining whether the operation is providing an equivalent level of performance. However, as part of a good faith attempt by the Department and Corey to achieve compliance the Department has determined that assessment of an amount under this factor is appropriate only in the event of noncompliance with the requirements set forth in V. ORDER, paragraph 1, above. The stipulated penalties agreed upon and ordered in this matter include consideration of the gravity of the violation.

c. Culpability. Inasmuch as Corey has undertaken to operate its open feedlot pursuant to the Permit it has the concomitant responsibility to comply with all the terms and conditions of the Permit. While Corey corrected the deficiencies with respect to sampling, monitoring and reporting in the non pilot portion of his system after receipt of the Department's June 2, 2008 letter, Corey's failure to comply with all monitoring and reporting requirements warrants assessment of a penalty for this factor. However, as part of a good faith attempt by the Department and Corey to achieve compliance the Department has determined that assessment of an amount under this factor is appropriate only in the event of noncompliance with the requirements set forth in V. ORDER, paragraph 1, above. The stipulated penalties agreed upon and ordered in this matter include consideration of Corey's culpability.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Corey. By signature to this Order, all rights to appeal this Order are waived by Corey.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191, 459A.501 and 459A.502. Compliance with V. ORDER, paragraph 1 of this Order constitutes full satisfaction of all requirements pertaining to

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

ISSUED TO: COREY AGR. INC. OF LYTTON

the facts described in Division III of this Order and all violations related to those facts, including but not limited to all violations described in Division IV of this Order. The Department reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of
Feb., 2009.



COREY AGR. INC. OF LYTTON

Dated this 10 day of
Feb, 2009.

Field Office 3; EPA; Randy Clark; Gene Tinker; Ken Hesseniuss; Reza Khosravi; VIII. B.1